

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ARTMARK ASSOCIATES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU**-2287

Decision No. **CU** -1363

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ARTMARK ASSOCIATES, INC. in the amount of \$36,529.58 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are

a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in New York and that all times between June 20, 1949 and presentation of this claim on April 27, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that both of its stockholders are nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices reflecting sales to various Cuban consignees in the following amounts on the stated dates:

<u>Invoice No.</u>	<u>Date</u>	<u>Consignee</u>	<u>Amount</u>
6831	October 15, 1958	Alvarez e Hijos	\$ 784.00
8372	December 31, 1959	J. Barreiro & Cia.	1,359.44
8373	December 31, 1959	J. Barreiro & Cia.	875.00
8006	September 30, 1959	General Electric Cubana, S. A. (\$1,342.90 less \$925.40 Paid)	417.50
8184	November 17, 1959	General Electric Cubana, S. A.	1,195.18
8303	December 18, 1959	General Electric Cubana, S. A.	8,051.27
9211	September 9, 1960	General Electric Cubana, S. A.	2,770.01
7877	August 31, 1959	Importadora de Efectos Electricos Gesa, S. A.	1,418.59
8270	December 10, 1959	Importadora de Efectos Electricos Gesa, S. A.	1,902.48

<u>Invoice No.</u>	<u>Date</u>	<u>Consignee</u>	<u>Amount</u>
7557	May 22, 1959	Kress Electricos Importadores, S. A. (\$1,513.87 less \$756.94 paid)	\$ 756.93
8292	December 16, 1959	Kress Electricos Importadores, S. A. (\$1,001.76 less \$500.88 paid)	500.88
7153	January 20, 1959	R. Neira y Cia.	983.53
8005	September 30, 1959	Marcelino Ponte y Cia.	2,055.26
8013	September 30, 1959	Marcelino Ponte y Cia.	388.45
8247	November 30, 1959	Marcelino Ponte y Cia.	1,175.95
8273	December 10, 1959	Vicente Rivera	389.78
8111	October 30, 1959	Enrique Slapochnick (\$1,043.36 less \$521.68 paid)	521.68
8271	December 10, 1959	L. Sosa & Cia.	276.50
8272	December 10, 1959	L. Sosa & Cia.	1,445.92
7087	December 24, 1958	L. Sosa & Cia. (\$836.25 less \$371.94 paid)	491.31
7879	August 8, 1959	Cia. Comercial Winston, S. A. (\$1,508.94 less \$754.47 paid)	754.47
8290	December 16, 1959	Cia. Comercial Winston, S. A.	951.43

Additionally, the record contains copies of correspondence from collecting banks in Cuba, in which it is acknowledged that certain drafts drawn on the respective consignees had been paid as of the stated dates, and that the banks were awaiting a dollar reimbursement release from the Exchange Authority, an agency of the Cuban Government:

<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
Armando Azcue	\$ 461.62	July 11, 1961
Importadora de Efectos Electricos Gesa, S. A.	242.97	July 20, 1961
Importadora de Efectos Electricos Gesa, S. A.	242.97	July 10, 1961
Importadora de Efectos Electricos Gesa, S. A.	1,641.35	July 11, 1961
Importadora Rivera, S. A.	938.19	July 11, 1961
Independent Electric Co. of Cuba, S. A.	310.54	December 31, 1959

<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
Independent Electric Co. of Cuba, S. A.	\$ 613.55	June 20, 1961
Milwaukee Electric Co.	960.00	August 26, 1960
I. Alciturry Saez	1,192.83	July 11, 1961
Vale y Garcia	510.00	July 21, 1961

Claimant states that it has not received the funds nor has it received any payment on account of the debts owing.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred:

<u>On</u>	<u>As To</u>
September 29, 1959	\$3,015.77
October 30, 1959	417.50
November 1, 1959	709.30
December 1, 1959	1,463.76
December 17, 1959	1,195.18
December 28, 1959	8,051.27
December 31, 1959	2,393.71

<u>On</u>	<u>As To</u>
January 2, 1960	\$ 310.54
January 31, 1960	1,109.65
February 11, 1960	2,820.33
February 17, 1960	475.72
March 2, 1960	587.98
March 11, 1960	1,194.35
March 17, 1960	976.59
April 1, 1960	2,234.44
August 27, 1960	960.00
September 19, 1960	2,770.01
June 21, 1961	613.55
July 11, 1961	242.97
July 12, 1961	4,233.99
July 21, 1961	242.97
July 22, 1961	510.00
	Total \$36,529.58

being the date of publication of Law 568 as to the amount of \$3,015.77, the days following acknowledgment of payment with regard to those accounts which were paid in local currency to Cuban banks, and the dates by which the invoices which were not paid became due.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ARTMARK ASSOCIATES, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Six Thousand Five Hundred Twenty-Nine Dollars and Fifty-Eight Cents (\$36,529.58) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

FEB 28 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission, which was entered as the final
decision on MAY 27 1968

Francis Chastrow

Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)